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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/657,066 | 09/09/2003 | John O. Phillips | BXD4961/00102-1 | 9196 |
| 7590 | 06/28/2004 | | EXAMINER | |
| Kenneth J. Whittington STEVENS DAVIS MILLER & MOSHER, LLP Suite 850 1615 L Street NW Washington, DC 20036 | | | MARSH, STEVEN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3632 | |
| DATE MAILED: 06/28/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/657,066 | PHILLIPS ET AL. |
| | Examiner | Art Unit |
| | Steven M Marsh | 3632 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 September 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-14 is/are rejected.
 7) Claim(s) 12 and 13 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

This is the first office action for U.S. Application 10/657,066 for a Cup Holder filed by John O. Phillips et al. on September 9, 2003.

Claim Objections

Claims 12 and 13 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 12 and 13 claim the same limitations as claims 8 and 9, respectively, which they are dependent upon.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent D361,475 to Strong. Strong discloses a holder for a container with a means for holding a container at a level below an upper surface of a seat (see fig. 2... the cup holding portion and portion extending to the hinge). There is a strip (the portion extending from the hinge) extending from the holding means

and means (the rightmost tab extending down from the strip shown in fig. 2) for engaging a rear portion of a seat. The strip and the holding means are hinge coupled together about an axis and the holding means can rotate about the axis from a first position and a second position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strong in view of U.S. Patent 6,371,428 B1 to Zorich et al. Strong does not disclose a holding means with a tab for engaging a slot in the strip to hold the cup holder in a folded position. Zorich et al. discloses a collapsible beverage holder with a holding portion (18) and a strip (12) extending from the holding portion. The holder is collapsible between first and second positions at hinge portions (28 and 32) and a tab (34) in the holder, holds the holder in a second position through engagement with a slot (20) in the strip. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided tab means on the holding portion and a slot means on the strip portion taught by Strong, as taught by Zorich et al., for the purpose of holding hinged folding parts in a second position.

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strong in view of U.S. Patent 5,199,678 to Luebke. Strong discloses an engagement means for engaging the container, but does not disclose a flange spaced apart from the engagement means. Luebke discloses a cup holder with a holding portion (12) including a cup engaging means (14, 16, 18) and a strip means extending from the holding portion (30). There is a flange (32) spaced apart from the engagement means that prevents the holder from moving to the rear of the seat and prevents the cup engaging means from hitting a chair arm. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a flange spaced apart from the holding means taught by Strong, as taught by Luebke, for the purpose of preventing the holding means from abutting against a chair arm.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strong in view of Luebke, and in further view of Zorich et al. Strong in view of Lubke does not disclose a holding means with a tab for engaging a slot in the strip to hold the cup holder in a folded position. Zorich et al. discloses a holding means with a tab and a strip with a slot as discussed above in the rejection of claims 3 and 4. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided tab means on the holding portion and a slot means on the strip portion taught by Strong in view of Luebke, as taught by Zorich et al., for the purpose of holding hinged folding parts in a second position.

Claims 8, 9, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strong in view of U.S. Patent 5,106,046 to Rowles et al. Strong does not disclose a strip comprising a first length and a second length slidably joined together to allow the length of the strip to be slidably adjusted. Rowles et al. discloses a cup holder with a holding means (12) and a strip (25) extending from the holding means. The strip has a first length (22) and a second length (24) slidably joined together for allowing a length of the strip to be slidably adjusted. There is also a means (col. 3, lines 31-50) for providing a friction contact between the first length and second length. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided first and second lengths in slidable contact for the strip taught by Strong, as taught by Rowles et al., to allow the overall length of the strip to be adjusted to adjust to different structures.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strong in view of U.S. Patent 6,010,104 to Hanson et al. Strong does not disclose an engaging means that is a u-shaped member. Hanson et al. discloses a cup holder with a holding means (15) and a strip (7) extending from the holding means. There is a u-shaped engaging means (see fig. 4, 19 and 27) for preventing forward and vertical movement of the holder relative to a seat. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a u-shaped engaging member on rear portion of the strip of the cup holder taught by Strong, as taught by Hanson et al., for the purpose of further limiting movement of the holder with respect to a seat.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strong in view of Rowles et al., and in further view of Hanson et al. Strong in view of Rowles et al. fails to disclose a u-shaped engaging member. Hanson et al. discloses a u-shaped engaging member at the rear portion of the strip of a cup holder as discussed above in the rejection of claim 10. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a u-shaped engaging member on rear portion of the strip of the cup holder taught by Strong in view of Rowles et al., as taught by Hanson et al., for the purpose of further limiting movement of the holder with respect to a seat.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,280,870 to Chick et al.

U.S. Patent 5,813,579 to Hendrickson

U.S. Patent 4,779,831 to Anderson

U.S. Patent Des. 413,769 to Mason

U.S. Patent 5,865,412 to Mason

U.S. Patent 4,606,523 to Statz et al.

U.S. Patent 6,149,229 to Dillon, Jr. et al.

The above patents all disclose container holders.

Any inquiry concerning this communication or earlier communications from

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the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

SM

Steven M. Marsh

June 21, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER